

PERSONNEL

MERIT SYSTEM BOARD

Layoffs

Proposed Readoption with Amendments: N.J.A.C. 4A:8

Authorized By: Merit System Board, Margaret E. L. Howard, Presiding Board Member.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:6-28 and 11A:8-1 through 11A:8-4.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-35.

A public hearing concerning the proposed readoption with amendments will be held on:

Tuesday, March 4, 2003 at 3:00 P.M.

The Merit System Board Room

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44 South Clinton Avenue
Trenton, New Jersey

Please call Elizabeth Rosenthal of the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by March 22, 2003 to:

Henry Maurer, Director
Merit System Practices and Labor Relations
Unit A
Department of Personnel
P.O. Box 312
Trenton, New Jersey 08625-0312

The agency proposed readoption with amendments follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1(c), N.J.A.C. 4A:8 expires on July 2, 2003. Since N.J.A.C. 4A:8 was last readopted in 1999, no amendments have been adopted to these rules. With the exception of the amendments described below, the Merit System

Board has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by law.

Most of the proposed amendments to N.J.A.C. 4A:8 are necessitated by P.L.2001, c.241, which requires that the order of layoff shall be conducted in the “inverse order of seniority.” Therefore, all language in the layoff rules regarding the use of “merit points” in determining the order of layoff is proposed for deletion. The legislation defines seniority free of any job performance or merit point factors, and further defines other terms used in the layoff process that previously had been defined by rule, including “layoff unit” and “job location.” It sets forth other procedures to be utilized in layoffs also heretofore governed by rule, including the determination of lateral and demotional title rights and the order of exercising such rights. Additionally, the legislation defines special reemployment rights. Finally, the legislation sets forth the types of pre-layoff actions that an appointing authority is obligated to effectuate to lessen the possibility, extent or impact of layoffs. This, too, was previously an area governed solely by rule.

Subchapter 1 concerns layoff procedures to be followed by State agencies and by those political subdivisions subject to Title 11A of the New Jersey Statutes. The subchapter describes the entire process, starting with alternatives to layoff.

N.J.A.C. 4A:8-1.1 explains the division of authority concerning layoff actions. The rule provides that the decision to institute a layoff action rests with the individual appointing authority, while the responsibility for determining the rights of all affected employees remains with the Department of Personnel. A proposed amendment to N.J.A.C. 4A:8-1.1(b) would state that the Commissioner or designee would determine seniority in layoffs, but not “merit points,” a term proposed for deletion. Also proposed for deletion is subsection (c), which explains that the provisions regarding smaller layoff units and time limitations on special reemployment rights would not be applicable to veterans and disabled veterans. Subsection (c) goes on to say that merit points shall not be calculated for veterans and disabled veterans unless merit points provide a greater advantage to them than does seniority as compared to a non-veteran. This subsection is proposed for deletion because it is not necessary to exempt veterans and disabled veterans from the application of merit points since all references to merit points are proposed for deletion. Additionally, the disabled veterans and veterans exemption regarding layoff units is inconsistent with P.L.2001, c.241, as is the exemption regarding special reemployment rights time limitations. Under the new law, layoff units cannot be reduced in size, so veterans no longer require an exemption from a smaller layoff unit. Also, the legislation does not provide a time limit for special reemployment rights; therefore, no exemption from a time limitation is necessary.

N.J.A.C. 4A:8-1.2 describes alternative measures available to appointing authorities to lessen the possibility of layoffs. No amendments are proposed to

N.J.A.C. 4A:8-1.2.

In addition to alternative measures, all of which require employee consent, N.J.A.C. 4A:8-1.3 provides for pre-layoff actions to lessen the possibility, extent or impact of layoffs. In light of the codification in P.L.2001, c.241, of the pre-layoff action requirement on the part of appointing authorities, and the fact that merit points can no longer be used to determine the order of layoff, the Board proposes deleting subsection (d), which provides for the use of merit points in certain pre-layoff actions. A proposed new subsection (b) would require the appointing authority to lessen the impact of any layoff action on permanent employees. The subsection would explain that employees without permanent status, and then those with the least seniority, would be placed in positions being vacated, reclassified or abolished. The current subsection (b), which encourages consultations with negotiations representatives, would be replaced with a new subsection (c), which requires consultations with negotiations representatives. The Board also proposes deleting subsection (c), regarding appointing authority requests for Department of Personnel assistance. In its place, a proposed new subsection (d) would permit the Department of Personnel to provide assistance to any appointing authority requesting help in implementing pre-layoff actions.

N.J.A.C. 4A:8-1.4 describes the role of the Department of Personnel in reviewing appointing authority actions prior to the issuance of layoff notices to employees. This section includes a comprehensive listing of the information that must be provided to

the Department of Personnel at least 30 days before the issuance of layoff notices, and explains the remedial action the Department may take upon receipt, or in the absence of timely receipt, of this information. In particular, in paragraph (a)6, appointing authorities are required to provide a detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable. Additionally, paragraph (a)8 requires that appointing authorities provide a list of affected negotiations representatives. N.J.A.C. 4A:8-1.4 is proposed for readoption without amendment.

N.J.A.C. 4A:8-1.5, regarding layoff units and job locations, defines the unit of government in which layoffs, and the resulting displacement of employees, are to be confined. However, the rule must be amended to conform to P.L.2001, c.241, which provides that, in State service, the layoff unit is an entire department or autonomous agency, and that, in a county or municipality, the layoff unit is a department, unless a different layoff unit consisting of one or more departments is approved by the Commissioner of Personnel. Currently, N.J.A.C. 4A:8-1.5 permits the establishment of a layoff unit in State service consisting of a division or divisions in the department or agency where the layoff is occurring. In light of P.L.2001, c.241, all language in N.J.A.C. 4A:8-1.5(a) regarding a smaller layoff unit in State service is proposed for deletion. However, no amendments are proposed to subsection (b), regarding the layoff unit in local service, as subsection (b) is consistent with the new law.

The requirements for notice of a layoff are set forth in N.J.A.C. 4A:8-1.6. An amendment to subsection (e) is proposed to delete a reference to merit points. Thus, the subsection would now indicate that layoff rights and related seniority determinations shall be based on the layoff's effective date. It is noted that paragraph (f)1, which is not provided for but is permitted under P.L.2001, c.241, is proposed for readoption without amendment. That paragraph requires that an employee who is notified of his or her separation due to layoff must be informed of vacancies in other State departments or agencies to which the employee would have the right to accept appointment, so long as he or she is qualified and has received at least a Commendable in the most recent final PAR rating. The Board believes that the program set forth in N.J.A.C. 4A:8-1.6(f)1 provides a fair and objective method for enhancing alternative employment opportunities for State employees affected by a layoff.

Subchapter 2 defines the rights afforded employees in a layoff action and explains the exercise of those rights in State and local service. N.J.A.C. 4A:8-2.1 describes the three types of rights of employees affected by a layoff action: lateral title rights, demotional title rights and special reemployment rights. No amendments are proposed to N.J.A.C. 4A:8-2.1.

N.J.A.C. 4A:8-2.2 concerns the exercise of lateral and demotional rights in a layoff. Proposed amendments to subsection (a) would delete references to merit points and veterans' and disabled veterans' exemption from them. Only language requiring

that the order of lateral and demotional rights shall be exercised in accordance with seniority would be retained. An amendment is also proposed to subsection (b), regarding the exercise in State service of lateral and demotional rights within the municipality in which the office is located and then within the job location selected by the employee. The amendment would delete language referring to veterans and disabled veterans. Thus, when any State employee, regardless of veterans status, exercises lateral or demotional rights within a job location, the job location would be in their department or autonomous agency.

Amendments are proposed to N.J.A.C. 4A:8-2.2(d)3 to provide simply that, when there are multiple provisionals with underlying permanent status at a job location, the specific position against which a lateral or demotional right is exercised is based on the level of the permanent title held and seniority. Language referring to veteran and disabled veteran provisionals and their exemption from merit points when it would not be to their advantage is proposed for deletion. Paragraph (d)5, regarding exercise of lateral and demotional rights against the position held by a permanent employee whose most recent PAR rating was Unsatisfactory, would be amended to apply to both State and local service. Paragraph (d)6 is proposed for deletion, as it refers to a performance rating that is no longer used, the Marginally Below Standards rating. A proposed amendment to paragraph (d)7, regarding the exercise of lateral or demotional rights against the position held by the permanent employee with the least seniority, would delete a reference to local service so that the provision would apply to both State

and local service. N.J.A.C. 4A:8-2.2 (d)8 through 10 are proposed for deletion. These paragraphs concern the exercise of lateral and demotional rights against the State employee with either the fewest merit points or the least seniority.

The Board proposes deleting the current language in N.J.A.C. 4A:8-2.2(f), regarding the granting in local service of demotional title rights between categories (professional, para-professional and non-professional titles). Subsection (g), which sets forth against whom an employee may exercise demotional rights, would be recodified as (f). However, current paragraphs (g)1 through 5, all of which refer to the use of merit points in determining whom the employee would displace, are proposed for deletion. In their place, language would be added providing that the exercise of demotional rights against any title previously held on a permanent basis within current continuous service (sometimes referred to as “prior held title rights”) would be done on the basis of greater permanent continuous service except that if the title is held by a provisional or probationary employee, that employee would be subject to displacement. The current paragraph (g)6, regarding circumstances under which the employee has lateral or demotional title rights options with a higher class code than the previously held title, would be recodified as (f)1.

As subsection (g) would be recodified as (f), subsections (h) and (i) would be recodified as (g) and (h). Additionally, the recodified subsection (h), regarding the order in which employees may exercise demotional title rights, would be amended to delete

language referring to veterans, disabled veterans and merit points. Amended language is proposed which would provide that an employee may exercise demotional rights regardless of the amount of seniority he or she has vis-à-vis the employee against whom he or she is exercising those rights.

N.J.A.C. 4A:8-2.3 pertains to the exercise of special reemployment rights. Initially, the Board proposes a technical amendment to subsection (a), regarding the entitlement of special reemployment rights to the employee's previously held lateral or demotional title. The amendment would correct the cross-reference to N.J.A.C. 4A:8-2.2(g); it should now read N.J.A.C. 4A:8-2.2(f) based on the proposed recodification described above.

N.J.A.C. 4A:8-2.3(b)2 would be amended to provide that special reemployment lists shall take priority over noncompetitive appointments. This amendment would codify longstanding Department of Personnel practice. Subsection (c) would be amended to delete provisions providing for placement on a special reemployment list for an unlimited duration only for local employees, for veterans and disabled veterans in State service and for non-veteran State employees who are demoted or laterally displaced in a layoff. Thus, all permanent employees who are laid off, whether they are State or local, veteran or non-veteran, would be placed on a special reemployment list for an unlimited duration.

The Board proposes amending N.J.A.C. 4A:8-2.3(c)1, which delineates the ranking of eligibles on special reemployment lists. The amendment would delete all language regarding merit points and veterans and disabled veterans. However, it would retain language requiring that individuals be ranked on the list based on the employee's permanent title and seniority at the time of layoff, in accordance with the method for calculating seniority in effect at the time of the list's certification. Like most of the other amendments described in this Summary, this one is necessary in light of P.L.2001, c.241.

N.J.A.C. 4A:8-2.3(c)2 and 3 are proposed for readoption unchanged. Paragraph (c)2 specifies that an employee who accepts appointment to a position in another department or agency in accordance with N.J.A.C. 4A:8-1.6(f)1 shall not be placed on a special reemployment list. Paragraph (c)3 states that, following appointment, an employee's name shall be removed from the list for any title with the same or lower class code in State service or lower level in local service, with the proviso that the employee shall retain rights to his or her permanent job title and job location at the time of layoff.

N.J.A.C. 4A:8-2.3(d), (e) and (f) are also proposed for readoption unchanged. Subsection (d) provides that employees who resign or retire in lieu of lateral or demotional displacement or layoff will not be placed or remain on a special reemployment list. Subsection (e) states that, in State service, employees who refuse

reemployment to a job location will be removed from future certifications to that location for the title and all previously held lateral or lower titles. Subsection (f) provides that the name of an employee shall be removed from all applicable special reemployment lists where the employee receives an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A within 90 days of the effective date of a layoff resulting in the employee's separation from service.

N.J.A.C. 4A:8-2.4 currently pertains to the definitions and calculation of both seniority and merit points. In light of the required deletion of all references to merit points in the rules, the reference to merit points in the heading of this rule section is also proposed for deletion. However, subsection (a), which provides the definition of seniority for all employees except those serving in police and fire titles, is proposed for readoption without amendment. Subsection (b), regarding the definition of seniority for employees serving in police and fire titles, is proposed for readoption with one technical amendment to paragraph (b)4. The amendment would change the cross-reference from N.J.A.C. 4A:8-2.2(g) to N.J.A.C. 4A:8-2.2(f), the subsection concerning the exercise of previously held demotional rights, in accordance with the proposed recodification of N.J.A.C. 4A:8-2.2.

N.J.A.C. 4A:8-2.4(c) describes "preferred status," which means a higher ranking for layoff rights purposes than anyone currently serving in a demotional title. A technical amendment is proposed to N.J.A.C. 4A:8-2.4(c)1, to change the cross-

reference from N.J.A.C. 4A:8-2.2(g) to N.J.A.C. 4A:8-2.2(f). Additionally, N.J.A.C. 4A:8-2.4(c)3(i) through (iv), regarding a situation in which more than one employee has preferred status, are proposed for deletion. These deleted subparagraphs all provide for the priority of disabled veterans and veterans over non-veterans in this situation, except in local service, where priority is determined on the basis of class level of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title. In place of the deleted subparagraphs, language would be added that the priority of employees exercising preferred status would be based on the class code in State service and the class level in local service of the permanent title from which the employee was laid off or demoted and the seniority held in the higher title. Adding this language would restore the rule to its form prior to the 1999 amendments regarding merit points.

N.J.A.C. 4A:8-2.4(d) through (g) are proposed for readoption without amendment. These subsections concern deductions from and accrual of seniority for layoff purposes in different situations. Subsection (h), regarding breaking a tie in seniority between two or more employees, is also proposed for readoption without change, except for a technical amendment to paragraph (h)3, to change the cross-reference from N.J.A.C. 4A:8-2.2(g) to N.J.A.C. 4A:8-2.2(f).

However, N.J.A.C. 4A:8-2.4(i), regarding breaking a merit points tie between two or more employees, and subsection (j), regarding the calculation of merit points,

are both proposed for deletion in their entirety. As indicated above regarding other proposed amendments, these amendments are necessary to conform the rules to P.L.2001, c.241, which permits only seniority to be used to determine the order of layoffs.

N.J.A.C. 4A:8-2.5, concerning the interaction between reassignments and layoffs, is proposed for readoption without change. N.J.A.C. 4A:8-2.6 describes the procedures to be followed when an employee wishes to appeal either the “good faith” of a layoff action or the determination of layoff rights. This rule, too is proposed for readoption without amendment.

As the Merit System Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed readoption of N.J.A.C. 4A:8 with amendments includes major changes to the rule chapter. These changes would delete all references to merit points in determining the order of layoff in State service, in accordance with P.L.2001, c.241. With these amendments, the primacy of seniority in the layoff process would be restored to N.J.A.C. 4A:8. Except for limited circumstances, such as the breaking of

ties in seniority, the use of performance factors in the layoff process would be omitted from the rules. The Board anticipates that employees would benefit from the objective formula seniority provides for determining the order of layoffs. This formula is more predictable than performance ratings and rewards longevity. Further, it makes the process virtually identical between State and local service.

Moreover, N.J.A.C. 4A:8-1.4 would continue to strengthen the ability of the Department of Personnel to perform an effective review of an agency's layoff plan. Providing a copy of the approved layoff plan to union representatives, as set forth in subsection (e), would continue to improve communications to employees about an impending reduction in force. N.J.A.C. 4A:8-1.5(c), which provides for county-wide job locations in State service, should continue to reduce the "bumping" that occurs during a layoff. However, the Merit System Board is aware that displacement within a county may be a hardship for some employees, particularly those who rely on public transportation. Therefore, N.J.A.C. 4A:8-2.2(b) and 2.3(a)1 would continue to provide that employees will have the option to exercise lateral, demotional and special reemployment rights first within the municipality in which the employee's facility or office is located.

It is noted that N.J.A.C. 4A:8-1.5(a) is proposed for amendment to delete language permitting the Commissioner of Personnel to approve a layoff unit smaller than a full department or agency in State service. The impact is expected to be positive

for employees in layoffs, as one small portion of a department would not be at risk of bearing the entire brunt of a layoff action.

N.J.A.C. 4A:8-1.6, Layoff notice, would continue to clearly indicate that personal service is the preferred method of providing an employee with notice of a layoff. If an employee is on a leave of absence or otherwise unavailable for personal service, and certified mail is used instead, the employee would also have a full 45 days' notice, as he or she does now, since the 45 days would be counted from the date of notice by the Postal Service. Also, N.J.A.C. 4A:8-1.6(f)1 would give employees separated in a layoff the opportunity to accept jobs in other departments or agencies for which they are qualified, which would mitigate the hardship caused by being laid off.

Extending demotional rights to a "previously held title" provides a valuable option for some employees, but it also has a negative impact on other employees who would not ordinarily be affected by a layoff action. The current language in N.J.A.C. 4A:8-2.2(g)6 (to be recodified as (f)1) would continue to ensure that such extended rights would not be granted when the employee has superior options through the exercise of lateral or demotional rights.

The proposed amendments to N.J.A.C. 4A:8-2.3, which would delete the limitation of special reemployment rights to five years for non-veteran State employees who are separated from service in a layoff, are expected to have a positive social

impact, as the amendments would expand special reemployment opportunities.

N.J.A.C. 4A:8-2.4(a) would continue to provide for jurisdiction seniority for non-police and fire titles in State and local service, which means that employees with many years of service in a jurisdiction would still get credit for that service in a layoff action, even if they have relatively little time in their latest job title. Second, the process of calculating seniority would continue to be less complex than it used to be when title seniority was used, thus making layoff actions easier to administer for appointing authorities and the Department of Personnel.

When career service employees have the opportunity for advancement to the Senior Executive Service or a high-level unclassified appointment, they should not be discouraged by the loss of seniority. Accordingly, the current N.J.A.C. 4A:8-2.4(d) would continue to provide that such types of service would not be deducted from seniority.

As to the current N.J.A.C. 4A:8-2.5, Reassignments, the provisions in this rule would continue to ensure that an appointing authority does not negate all of the displacements resulting from a layoff, while providing significant flexibility to appointing authorities and employees to establish acceptable work patterns following the layoff. Posting requirements would still ensure that employees are informed of opportunities for reassignment.

Finally, N.J.A.C. 4A:8-2.6 would continue to provide all career service employees in State and local government with a mechanism to challenge their layoffs and the calculation of their layoff rights.

The rules in N.J.A.C. 4A:8 also would continue to provide a regulatory framework for reductions in force. In the absence of readoption of this chapter, merit system employers and employees would have no guidance on layoffs, other than the provisions of Title 11A of the New Jersey Statutes.

Economic Impact

The Merit System Board anticipates that the proposed amendments to the layoff rules would have a positive economic impact. In particular, the deletion of all references to the use of merit points in the layoff process would remove subjectivity from the process, reduce the number of disputes and appeals, and economically benefit all employees who would be treated in accordance with their years of service.

The Board further anticipates that deleting language limiting the duration of some special reemployment rights would have a positive economic impact. With these amendments, State employees who are separated from service in a layoff would be treated the same as those employees who are affected in the layoff through lateral and

demotional displacement. They would also be treated the same as all local employees. Therefore, permanent State employees who lose their jobs through no fault of their own could have the opportunity to regain permanent State employment at any time in the future.

The Board also anticipates that amendments deleting language that would permit the establishment of a smaller layoff unit in State service would have a positive economic impact. No one portion of a department could be forced to bear the full brunt of a layoff action.

The Board notes that the use of jurisdiction seniority, the current method of calculating seniority for all titles but police and fire titles, should continue to reduce the costs of administering a layoff, since seniority calculations would be easier than they would be if title seniority were still in use.

In general, the layoff rules would continue to provide a fair and equitable system for implementing reductions in force in State and local service. The rules would continue to emphasize methods to reduce costs without resorting to layoffs, or to lessen the impact of layoffs when reductions in force are unavoidable.

If this chapter were not readopted, there would be a severe negative impact on public employers and employees, as well as the taxpaying public. Since the provisions

of Title 11A of the New Jersey Statutes provide mainly broad, general guidance on layoffs, costly litigation would be needed to resolve disputes concerning the application of these statutory provisions.

Federal Standards Statement

A Federal standards analysis is not necessary, as there are no Federal standards or requirements applicable to the subject matter of the rules proposed for readoption at N.J.A.C. 4A:8 with amendments. The rules proposed for readoption at N.J.A.C. 4A:8 with amendments concern layoffs of New Jersey merit system employees and are authorized by State law as indicated above.

Jobs Impact

It is anticipated that a positive jobs impact should result from adoption of the rules proposed for readoption at N.J.A.C. 4A:8 with amendments. State employees who are separated from service in a layoff would have the opportunity to accept positions in other State departments or agencies for which they are qualified. Additionally, those laid-off State employees not accepting any such available positions would be placed on a special reemployment list for an unlimited duration so that they would always have the opportunity to regain their State employment in the future.

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Agriculture Industry Impact

It is not anticipated that the rules proposed for readoption at N.J.A.C. 4A:8 with amendments would have any agriculture industry impact. The rules concern layoffs of certain State and local employees.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption at N.J.A.C. 4A:8 with amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption at N.J.A.C. 4A:8 with amendments would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposed for readoption may be found in the New Jersey

Administrative Code at N.J.A.C. 4A:8.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]:

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4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority [and merit points] (see N.J.A.C. 4A:8-2.4), and shall designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

[(c) The following provisions in this chapter shall not apply to veterans and disabled veterans: a layoff unit smaller than a department (see N.J.A.C. 4A:8-1.4) and time limitations on special reemployment rights (see N.J.A.C. 4A:8-2.3). Merit points (see N.J.A.C. 4A:8-2.4) shall not be used for veterans and disabled veterans in a layoff except when merit points provide a greater

advantage to the veteran or disabled veteran than does seniority as compared to a non-veteran. The layoff rights of veterans and disabled veterans are more fully set forth in the provisions cited above.]

4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;
2. Separating non-permanent employees;
3. Returning provisional employees to their permanent titles;
4. Reassigning employees; and
5. Assisting potentially affected employees in securing transfers or other employment.

[(b) Appointing authorities should consult with affected negotiations representatives prior to initiating measures under this section.

(c) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

(d) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by taking pre-layoff actions in the following manner:

1. First placing employees without permanent status in positions being vacated, reclassified or abolished;

2. In local service, next placing employees with the least seniority in positions being vacated, reclassified or abolished; and

3. In State service, next placing non-veterans with the fewest merit points, and then veterans and disabled veterans with the least seniority in positions being vacated, reclassified or abolished.]

(b) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by first placing employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

(c) Appointing authorities shall consult with affected negotiations representatives prior to initiating measures under this section.

(d) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. An autonomous agency is one which is in, but not under the supervision of, a principal department. [However, in departments or agencies with more than 1,000 employees, a different layoff unit consisting of a division or divisions of the department or agency may be approved by the Commissioner under the following conditions:

1. A request for a different layoff unit may be submitted by a department or agency to the Commissioner at least 45 days prior to the issuance of layoff notices. The request shall include the following information:

- i. The need for a unit smaller than the department or agency;
- ii. The functional and organizational structure of the department or agency;
- iii. The number of employees and the funding source, bargaining unit, equal employment opportunity categories, job titles, class codes and salary ranges of employees in the proposed layoff unit;

iv. The effect upon employee layoff rights of the proposed layoff unit, including reasonable geographic considerations relating to the employees' job location;

v. The impact upon service to departmental clientele and the public; and

vi. Other factors that may be relevant.

2. Upon submission to the Commissioner of the request, the department or agency shall provide notice of the request to affected negotiations representatives.

3. The Commissioner shall provide a 20-day period for affected negotiations representatives to submit written comments and recommendations.

4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, based on the totality of the information submitted pursuant to (a)1 above and the comments, if any, submitted pursuant to (a)3 above.

5. In no event shall a layoff unit have fewer than 1,000 employees; however, the Commissioner may approve the combining of divisions of a department or autonomous agency to create a layoff unit of 1,000 or more employees.

6. A layoff unit smaller than a department or agency shall not be approved if the layoff is the result of privatization or closure.

7. Notwithstanding the Commissioner's approval of a unit smaller than a department or autonomous agency, the layoff rights of a State employee who is a veteran or disabled veteran (see N.J.A.C. 4A:5-1) shall be exercised in the entire department or agency.]

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.

3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

- i. The need for a unit larger than a department;
- ii. The functional and organizational structure of the local jurisdiction;
- iii. The number of employees, funding source and job titles in the proposed unit;

iv. The effect upon employee layoff rights; and

v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency.

1. Each job location shall consist of a county.

2. The Commissioner of Personnel shall assign a job location to every facility and office within a department or autonomous agency.

3. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

(d) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and

2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority [and merit points] determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action

shall be served with a final written notice of their status, including a statement of appeal rights.

1. Employees notified of their separation from service due to layoff shall be informed of vacancies in other State departments or agencies, to which an employee, if qualified and if rated Commendable or above in the most recent final PAR rating, shall have a right to accept an appointment in lieu of separation. Should an employee accept an appointment to such a vacancy in lieu of separation, the employee shall forfeit any special reemployment rights that he or she would have had.

4A:8-2.2 Exercise of lateral and demotional rights

(a) Employees shall be ranked, for purposes of exercise of layoff rights, [as follows:

1. In local service, permanent employees exercising layoff rights shall be ranked] in order of seniority[;

2. In State service, employees who are disabled veterans exercising layoff rights shall be ranked in order of seniority ahead of employees who are veterans, and employees who are veterans exercising layoff rights shall be ranked in order of seniority ahead of employees who are non-veterans (see N.J.A.C. 4A:5-1); and

3. In State service, employees who are non-veterans exercising layoff rights shall be ranked in order of merit points].

(b) In State service, a permanent employee in a position affected by a layoff action shall be provided applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and then to the job locations selected by the employee within

the [layoff unit or, in the case of a permanent employee who is a veteran or disabled veteran (see N.J.A.C. 4A:5-1), within the] department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations within the [layoff unit or, in the case of a permanent employee who is a veteran or disabled veteran, within the] department or autonomous agency [(see N.J.A.C. 4A:8-1.5(c))] and indicate:

1. Job locations at which he or she will accept lateral title rights; and

2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(c) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(d) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;

2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be [determined as follows:

i. In local service,] based on the level of the permanent title held and seniority;

[ii. For non-veteran employees in State service, based on the class code of the permanent title held and merit points;

iii. For veterans and disabled veterans in State service (see N.J.A.C. 4A:5-1), based on the class code of the permanent title held and either seniority or merit points, whichever would provide the greater advantage to the veteran or disabled veteran;]

4. The position held by the employee serving in a working test period with the least seniority;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Unsatisfactory or equivalent rating;

[6. In local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Marginally Below Standards or equivalent rating;]

[7.] 6. In local service, the] The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4)[;].

[8. In State service, the non-veteran, permanent employee with the fewest merit points;

9. In State service, the permanent employee who is a veteran (see N.J.A.C. 4A:5-1) with either the least seniority or fewest merit points,

whichever would provide the greater advantage to the veteran as compared to a non-veteran;

10. In State service, the permanent employee who is a disabled veteran (see N.J.A.C. 4A:5-1) with either the least seniority or fewest merit points, whichever would provide the greater advantage to the veteran as compared to a non-veteran.]

(e) Employees serving in their working test periods shall be provided rights to their probationary titles in the same order as (d)1 through 4 above.

[(f) In local service, when an employee in a professional title is granted demotional title rights to a para-professional or non-professional title, or when an employee in a para-professional title is granted demotional title rights to a non-professional title, displacement may be made only on the basis of greater permanent continuous service. See N.J.A.C. 4A:4-2.5 for definitions of professional, para-professional and non-professional titles.]

[(g)] (f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. Displacement may be made [as follows:

1. In local service, on the basis of greater permanent, continuous service;

2. In State service, in the case of non-veteran employees, on the basis of greater merit points;

3. In State service, in the case of veterans (see N.J.A.C. 4A:5-1), on the basis of greater permanent, continuous service or greater merit points, whichever would provide the greater advantage to the veteran as compared to a non-veteran;

4. In State service, in the case of disabled veterans (see N.J.A.C. 4A:5-1), on the basis of greater permanent, continuous service or greater merit points, whichever would provide the greater advantage to the disabled veteran as compared to a non-veteran.

5. Notwithstanding (g)1 through 4 above, when a provisional or probationary employee is serving in the previously held title, that employee shall be subject to displacement, regardless of the seniority or merit points of that employee.] only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the

previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.

[6.] 1. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

[(h)] (g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series from which they were laid off.

[(i)] (h) [In State service, when] When employees are granted demotional title rights, the employees [shall exercise these rights as follows:

1. Disabled veterans (see N.J.A.C. 4A:5-1) shall be entitled to exercise these rights without regard to whether the disabled veteran has greater seniority or merit points than the employee being displaced.

2. Veterans (see N.J.A.C. 4A:5-1) shall be entitled to exercise these rights without regard to whether the veteran has greater seniority or merit points than the employee being displaced; and

3. Non-veterans] shall be entitled to exercise these rights [on the basis of greater merit points than the employees against whom they are exercising their displacement rights, except that if the employee being displaced is a veteran, the non-veteran must have both greater seniority and greater merit points] regardless of whether they have greater or less seniority than the employees against whom they are exercising such rights.

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2 [(g)] (f)). These rights are subject to the following limitations:

1. In State service, an employee who is displaced from the municipality in which his or her facility or office was located shall, at the employee's option, be granted special reemployment rights to that municipality in addition to job locations selected by the employee.

2. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon

written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

3. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take priority over promotional lists for the

State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over noncompetitive appointments, transfers except appointments pursuant to N.J.A.C. 4A:8-1.6(f)1, and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) [In local service, employees] Employees shall be placed on a special reemployment list for an unlimited duration. [In State service, veterans and disabled veterans, and those other employees who have exercised a lateral, demotional or prior held right within their department or agency, shall be placed on a special reemployment list for an unlimited duration. Non-veteran employees who are separated from State service in a layoff shall be placed on a special reemployment list for a period of five years.]

1. [In State service, on or after January 1, 2001, for job titles which do not have a preexisting special reemployment list, non-veteran employees shall be ranked on the list based on the employee's permanent title and merit points at the time of layoff, in accordance with the method for calculating merit points in effect at the time of certification of the list. Disabled veterans and then veterans shall be ranked at the head of the list in order of these

employees' permanent title and seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list. In the case of State service job titles which have a special reemployment list that predates January 1, 2001 and in local service, ranking] Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list.

2. An employee who accepts an appointment to a position in another department or agency in lieu of separation at the time of layoff shall not be placed on a special reemployment list. See N.J.A.C. 4A:8-1.6(f)1.

3. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with the same or lower class code (State service) or lower level (local service), except that the employee shall retain rights to his or her permanent job title and job location at the time of layoff.

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

(e) In State service, employees who decline reemployment to a job location will be removed from future certifications to that location for that title and all previously held lateral or lower titles. Employees who decline reemployment to their original or substituted job location (other than the original municipality) will be certified only to the original municipality for that title and all lateral or lower titles. Employees who decline reemployment to their original municipality shall be removed from the special reemployment list for that title and all lateral or lower titles.

1. However, employees who are unavailable for work when offered reemployment due to temporary disability or other good cause shall remain on the special reemployment list. Employees who decline reemployment because the position is in a different shift from the position from which they were displaced, or because the position is full time when the position from which displaced was part-time (or vice versa) shall remain on the special reemployment list.

(f) The name of an employee shall be removed from all applicable special reemployment lists where the employee receives an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A within 90 days of the effective date of a layoff resulting in the employee's separation from service.

4A:8-2.4 Seniority [and merit points]

(a) Seniority for purposes of this chapter, except for police and fire titles as set forth in (b) below, is the amount of continuous permanent service in the jurisdiction, regardless of title. An employee's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A shall be considered as continuous permanent service in the jurisdiction. Seniority shall be based on total calendar years, months and days in continuous permanent service regardless of work week, work year or part-time status.

1. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

(b) For police and fire titles in State and local service, seniority for purposes of this chapter is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title. Seniority shall be based on total calendar years, months and days in title regardless of work week, work year or part-time status.

1. A police title is any law enforcement rank or title where entry level employees are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course.

2. A fire title is any uniform fire department rank or title.

3. If two or more employees in a police or fire title have equal seniority, the tie shall be broken in the order of priority set forth in (h) below, except that the fifth tie-breaking factor shall give priority to the employee with greater continuous permanent service, regardless of title.

4. A county or municipal appointing authority may elect to provide, through adoption of an ordinance or resolution, as appropriate, that employees in police and fire titles may exercise previously held demotional rights, pursuant to N.J.A.C. 4A:8-2.2 [(g)] (f) against employees in any layoff unit in the jurisdiction. Such ordinance or resolution shall not be given effect during a layoff unless adopted at least 90 days prior to submission of the layoff plan (See N.J.A.C. 4A:8-1.4).

(c) Preferred status, which means a higher ranking for layoff rights purposes than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2 [(g)] (f), will have preferred status.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred status. Records of preferred status shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred status, priority will be determined [in the following order:

i. In local service, priority will be determined on the basis of the class level of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title;

ii. In State service, priority for employees who are disabled veterans (see N.J.A.C. 4:5-1) will be determined on the basis of the class code of the permanent title from which each disabled veteran was laid off or demoted and the seniority held in the higher title;

iii. In State service, priority for employees who are veterans (see N.J.A.C. 4A:5-1) will be determined on the basis of the class code of the permanent title from which each veteran was laid off or demoted and the seniority held in the higher title;

iv. In State service, priority for non-veteran employees will be determined on the basis of the class code of the permanent title from which each non-veteran was laid off or demoted and the seniority held in the higher title] on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(d) The following shall not be deducted from seniority calculations:

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff;

4. In State service, employment in the Senior Executive Service, provided the employee had permanent service prior to the SES appointment; and

5. In local service, leave to fill elective public office.

(e) Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority. In State service, deductions will be made only for such suspensions, leaves of absence and periods of layoff which began on or after March 1, 1987. In local service, deductions will be made only for such suspensions, leaves of absence and periods of layoff which began on or after July 1, 1988.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff and reappointment shall be deducted from the employee's seniority.

(g) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent

employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

(h) If two or more employees have equal seniority, the tie shall be broken in the following order of priority (tie-breakers based on service shall include service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, except in the case of an intergovernmental transfer of a police officer or a firefighter):

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system must have been approved by the Department of Personnel.

3. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority. An employee appointed to a previously held title

pursuant to N.J.A.C. 4A:8-2.2 [(g)] (f) shall have all permanent continuous service in that title aggregated for seniority purposes;

4. The employee with the greater seniority in the title before a break in service shall have priority;

5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;

6. The employee who ranked higher on the same eligible list for the title shall have priority;

7. The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;

8. The employee with greater total service, regardless of title or status, shall have priority;

9. The employee with the higher performance rating during the 12 month period prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

10. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

11. Other factors as may be determined by the Commissioner.

[(i) In State service, if two or more employees have equal merit points, the tie shall be broken in the following order of priority:

1. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority. An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2 (g) shall have all permanent continuous service in that title aggregated for seniority purposes;

2. The employee with greater total service, regardless of title or status, shall have priority;

3. The employee with the higher performance rating during the 12 month period prior to the effective date of the layoff shall have priority over an employee with a lower rating during that period;

4. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating during that period;

5. Other factors as may be determined by the Commissioner.

(j) In State service, beginning January 1, 2001, merit points shall be calculated based on a combination of seniority and performance. Employees in their working test period shall be considered to have a performance rating of Commendable. Merit points shall be calculated as follows:

1. The employee shall be awarded one point for each year of seniority, except for any year beginning January 1, 2001 and thereafter in which the employee received an Unsatisfactory final PAR rating.

2. Beginning January 1, 2001, for each final PAR rating of Commendable, one point shall be added to the employee's points for seniority, as calculated under (j)1 above.

3. Beginning January 1, 2001, for each final PAR rating of Exceptional, 2.5 points shall be added to the employee's points for seniority, as calculated under (j)1 above.

4. If the employee's final PAR rating for a given rating period is Unsatisfactory, no points shall be added to the employee's points for seniority, as calculated under (j)1 above, for that rating period.

5. When there is no final PAR rating on file for an employee for a given rating period, the final rating for that period shall be deemed Commendable and points shall be added accordingly.

EXAMPLE: Emily has 20 years of seniority. As she never received an Unsatisfactory PAR rating, Emily is awarded points for all 20 years. Although Jacob has 21 years of seniority, in 2001 he received an Unsatisfactory PAR rating. Therefore, Jacob also is awarded points for 20 years of seniority instead of 21.

A layoff is effective on January 1, 2003. Emily and Jacob each have final PAR ratings on file with the appointing authority personnel office between January 1, 2001 and that date. Emily's final PAR rating in 2001 was

Commendable and in 2002 Exceptional. She receives one point for her rating of Commendable and 2.5 points for her rating of Exceptional, for a total of 3.5 points added to her 20 years of seniority. As a result, her merit points total 23.5. Meanwhile, as already noted, Jacob had a final PAR rating of Unsatisfactory in 2001 and, in 2002, a final PAR rating of Commendable on file with the appointing authority personnel office. Therefore, he receives no points for his rating of Unsatisfactory and one point for his rating of Commendable, which is added to his 20 years of seniority. As a result, his merit points total 21.

6. In any year when fewer than 85 percent of the career service employees in a department or agency have received final PAR ratings, as calculated by the following March 1 for the preceding calendar year, merit points shall not be awarded for career service employees in that department or agency for that year.

i. If the Department of Personnel finds that fewer than 85 percent of the career service employees in a department or agency did not receive final PAR ratings in a given year due to an effort by employees to ensure that PAR compliance would be below 85 percent, all career service employees in that department or agency shall receive merit points for that year, notwithstanding the provisions of (j)6 above.

7. The Commissioner shall calculate, on an annual basis by March 1 for the preceding calendar year, a parity index for each State department and agency. The parity index shall compare the final PAR ratings of minority career service employees in the department or agency to the final PAR ratings of white career service employees in the same department or agency.

i. "Minority" means the four race/ethnic categories defined in N.J.A.C. 4A:7-1.1(d)2 through 5. "White" means the race/ethnic category defined in N.J.A.C. 4A:7-1.1(d)1.

ii. The parity index shall be calculated as follows:

(1) The number of minority career service employees in the department or agency who received an Exceptional final PAR rating shall be divided by the total number of minority career service employees in the department or agency;

(2) The number of white career service employees in the department or agency who received an Exceptional final PAR rating shall be divided by the total number of white career service employees in the department or agency;

(3) The figure determined in (j)7ii(1) above shall be divided by the figure determined in (j)7ii(2) above to arrive at the parity index.

iii. Notwithstanding the provisions of (j)7 above, the parity index shall not be calculated for any department or agency in which the total number of minority career service employees is 30 or less.

iv. For any year in which the parity index for a department or agency is below 70 percent, merit points shall not be awarded for employees in that department or agency.

v. For any year in which the parity index for a department or agency is 80 percent or higher, merit points shall be awarded for employees in that department or agency.

vi. For any year in which the parity index for a department or agency is below 80 percent but not less than 70 percent, the Commissioner shall convene an audit team, to be comprised of employees of the Department of Personnel and the department or agency, including the affirmative action officer for the department or agency or his or her designee. The following procedures regarding the audit shall be followed:

(1) The audit team shall review the PAR ratings of the employees in the department or agency for that year and prepare and submit to the Commissioner, the department or agency and affected negotiations representatives a report regarding the PAR ratings;

(2) Within 20 days of receipt of the report, the department or agency and affected negotiations representatives may submit comments regarding the report to the Commissioner;

(3) Following a review of the comments submitted, if any, the Commissioner shall make a determination regarding whether the department or agency's PAR ratings can be used to award merit points for that year;

(4) The Commissioner may direct a department or agency to take such remedial or corrective actions, as appropriate, to ensure the effective operations of the PAR program.]